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FINAL PROJECT AGREEMENT

Labs21 XL Project

DRAFT
July 25, 2000

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II. Introduction to the Agreement

A. Project Signatories

The Project Signatories to this Final Project Agreement (FPA or Agreement) are EPA's Office of Policy, Economics and Innovation and EPA's Office of Administration and Resources Management. These two offices are referred to as "the EPA signatories" in this document. In addition, as discussed below, the FPA later may include addenda that describe specific commitments made by Labs21 partners to achieve superior environmental performance as well as specific flexibilities requested by parties to those commitments. The term "Project Signatories" as used in this document refers both to the EPA offices signing this FPA as well as to any Labs21 partners or other parties signing on to any subsequent addenda.

B. Purpose of the XL Program

This FPA states the intentions of the EPA Signatories to carry out a pilot project as part of EPA's "Project XL," an EPA initiative which tests the extent to which regulatory flexibility, and other innovative environmental approaches, can be implemented to achieve both superior environmental performance and reduced economic and administrative burdens. (See 60 FR 27282; May 23, 1995, and 62 FR 19872; April 23, 1997).

C. Purpose of this Agreement

This FPA is a joint statement of the EPA Signatories' plans and intentions with respect to the Laboratories for the 21st Century or Labs21 XL Project. This FPA outlines the details of how this project will be implemented and evaluated and sets forth the terms of the agreement.

This FPA describes the plans of the Project Signatories and represents the firm commitment of each signatory to support the XL process through the Labs21 initiative, to select, in appropriate circumstances, and to implement the associated regulatory flexibility (subject to applicable procedural and substantive requirements and consideration of public comment) and to follow the terms of this FPA. This FPA does not create legal rights or obligations and is not a contract, a final agency action or a regulatory action such as a permit or rule. This FPA does not give anyone a right to sue the Project Signatories for any alleged failure to implement its terms, either to compel implementation or to recover damages. While the Project Signatories fully intend to fulfill the commitments set forth in this FPA, they are not legally obligated to do so. Nevertheless, the Project Signatories will strive for a high level of cooperation, communication and coordination to assure successful effective and efficient implementation of the Agreement and the Project.

EPA's Office of Administration and Resources Management envisions that Labs21 will be multi-media in scope. This Agreement represents the first phase of this project, and will serve as an "umbrella FPA" to define basic responsibilities and commitments of relevant EPA offices and potential Labs21 partners that sign on to later case-specific agreements. Later entity- or group-specific FPA addenda will define the exact environmental commitments and any associated flexibilities to be proposed by the Agency for approval and implemented subject to public notice

and comment. These addenda will be signed by the appropriate parties.

This FPA and materials relating to this project are available on the Project XL website at www.epa.gov/projectxl and the Labs21 website at www.epa.gov/labs21century.

D. Project Summary

EPA through its Office of Administration and Resources Management (OARM) is establishing a voluntary initiative to improve laboratory environmental performance through energy and water efficiency. Later, the Agency intends to expand the initiative to include other environmental parameters. This initiative, named Laboratories for the 21st Century or Labs21, evolved from the Agency's recent efforts to improve the environmental performance of its own laboratories. As part of developing the Labs21 Initiative, the Agency is anticipating offering incentives to prompt laboratories to participate in this new program. OARM will work in this XL project with EPA's Office of Environmental Policy Innovation (OEPI), the office that runs the XL program, to harmonize the XL and Labs21 intake processes. This collaboration will ensure that the EPA Labs21/XL team will act as facilitators for compiling and reviewing the information needed by XL to assess the environmental commitments and any associated requests for flexibilities.

E. Project Contacts

Labs21 Coordinator:	Phil Wirdzek U.S. Environmental Protection Agency (3204R) Ronald Reagan Building 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460
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II. Project Description

A. Labs21 Initiative Background

Working together, EPA and the U.S. Department of Energy (DOE) are developing Labs21, a voluntary initiative designed to improve the environmental performance of our nation's laboratories. The goal of Labs21 is to improve laboratory energy and water efficiency, encourage the use of renewable energy sources, and promote environmental stewardship in U.S. laboratories.

The initiative consists of three components:

Labs21 Partnership Program–Establishing voluntary partnerships with interested

public and private sector labs. Working with EPA Labs21 staff, each partner will set voluntary energy and water efficiency goals and measure and report the success of their efforts.

Training–Offering training or other opportunities to exchange technical information with Labs21 initiative participants, including continuing to sponsor the annual Labs21 conference.

Best Practices–Creating an Internet-accessible compendium of best practices, case studies, and energy and water data documenting innovations in laboratory design and operation. It will build upon the Design Guide for Energy-Efficient Research Laboratories developed by the Lawrence Berkeley National Laboratory.

The objective of Labs21 is to create environmental showcase laboratories by encouraging laboratory owners, operators, and designers to adopt the "Labs21 approach." This approach involves an initial evaluation of a laboratory's energy use from a holistic, or comprehensive, perspective when considering efficiency improvements. EPA is applying the Labs21 approach to its facilities and anticipates significant cost savings and environmental benefits as a result. For example, at its 150,000 square-foot Ann Arbor, Michigan, laboratory, EPA is expecting to reduce annual energy usage by 68 percent. This will, in turn, reduce the laboratory's annual utility bill by 74 percent for a savings of more than $800,000 per year. This is all possible through a guaranteed contract with EPA's energy services contractor. The Agency is currently implementing comparable modifications at many of its other laboratories and is expecting similar results. Based on its experience with its own facilities, EPA's OARM is developing Labs21 to encourage similar improvements at laboratories throughout the United States.

EPA held an initial planning meeting on September 8, 1999, to discuss the emerging program with interested parties. (A meeting summary is available at http://www.epa.gov/labs21century/lab21init/pdf/summary.pdf). Since that time, EPA has been working with technical experts from the National Renewable Energy Laboratory, the Lawrence Berkeley National Laboratory, Carnegie Mellon University, and other private sector firms to develop the program further, including an initial pilot phase.

Partnership Program

During the Pilot Phase, the Labs21 Team will work closely with public and private sector laboratories to define the scope of pilot projects, provide technical assistance, and develop a method to measure and evaluate the success of each project. Pilot Partners must commit to the following:

Adopt the Labs21 principles for improving energy and water efficiency.

Commit to a specific pilot project, such as using the guidelines developed by the Labs21 Team when designing a new laboratory or retrofitting an existing facility.

Help the Labs21 Initiative develop a method to measure and evaluate the success of

the project.

Participate in the Labs21 conference, including a brief signing ceremony with senior-level EPA and DOE officials.

Each pilot partner will have its own goals and unique needs. For some partners, beginning with a complete energy and water audit will be an important first step. The Labs21 Team will help Pilot Partners find an experienced energy auditor to perform the audit. The audit would develop an efficiency baseline for the facility, document building configuration and energy management characteristics, and identify energy and water conservation measures. Other partners might need a different level of support, which they can negotiate with the Labs21 Team as part of the application process.

The Labs21 Team agrees to support the efforts of the Pilot Partners by doing the following:

- Providing technical assistance, which may include:
  - Planning for a senior management briefing on the advantage of improving the energy and water efficiency of a laboratory.
  - Developing an energy audit protocol.
  - Tasking an auditor to conduct an energy audit.
  - Reviewing the results of an energy audit.
  - Meeting with an architect or A/E firm to plan a new laboratory or expand an existing laboratory.
  - Reviewing an existing design.
- Providing opportunities for education and training on laboratory energy and water efficiency.
- Working with laboratories to obtain approval through EPA's Project XL program of flexibilities that offer superior environmental performance and environmental benefit.
- Working to identify the value of associated emission reductions and applying the value to laboratory efficiency improvements.
- Helping create and promote a national database of laboratory energy and water consumption by laboratory type.
- Recognizing Pilot Partners through an awards program, publications, and the Labs21 Web site.
- Researching, writing, and distributing case studies documenting successful efforts to reduce the environmental impacts of U.S. laboratories.

- Holding an annual Labs21 conference at which Labs21 Pilot Partners can exchange technical information, network with one other, and be recognized for their participation.

Pilot partners will also help define participation requirements for future partners who join Labs21 at the conclusion of the pilot phase. As currently envisioned, the Labs21 Partnership Program will have two participation categories when fully implemented: Partners and Supporters. Partners will include laboratory owners and operators that commit to the Labs21 approach. Supporters will include individuals or groups willing to promote the objectives of Labs21. Examples of potential supporters include energy savings contractors, trade associations, independent energy consultants, and architecture firms specializing in laboratory design. Supporters would not be eligible for participation in case-specific agreements under the Labs21 XL Project. During the pilot phase of Labs21 development, the Labs21 Team will develop the criteria for participating in Labs21 as a Partner or Supporter. This may include developing a labeling program to designate "Laboratories for the 21st Century."

OARM will recruit potential Labs21 Partners through its Web site, conferences, limited announcements, and letters of invitation. OARM will ensure that Labs21 representatives meet with appropriate staff of the interested laboratories to discuss the objectives of Labs21. Through these early meetings, the Labs21 representatives will determine the prospective partners' willingness to embrace each of the Labs21 principles and apply these principles to their laboratories.

Having confirmed each partner's commitment to the Labs21 principles, OARM will ensure that a technical team visits with each prospective partner. Working with appropriate laboratory personnel, the technical team will define where and how it can assist the partner in developing a Labs21 facility. These visits might include reviewing the laboratory facility; modifying, as appropriate, the partner's engineering and architectural designs; or educating the partner's architecture and engineering firm on the objectives of the Labs21 project. The technical team will also assist in developing the baseline data-set from which the laboratory will establish its voluntary goals and measure its success. Together, the technical team and the partner will develop a time-frame for completing the planned pilot project.

Training

The Labs21 Team will provide training or other opportunities to exchange technical information with Labs21 initiative participants. A comprehensive education and training plan for energy-efficient laboratory design will target three distinct audiences, each with their own requirements for level of detail, support materials, and duration. As discussed in Section III.D, EPA also plans to establish Regional Centers of Excellence to help promote the Labs21 principles to interested laboratories around the country. The audiences include:

- Architecture and engineering students
- Design professionals (practicing architects, mechanical engineers, and code officials)
- Laboratory O&M management personnel

Best Practices

As the initiative evolves, the Labs21 Team will create an Internet-accessible compendium of best practices, case studies, and energy and water data documenting innovations in laboratory design and operation. Case studies will detail the use and application of both emerging and proven technologies. Each will include information on capital outlays, cost savings, and efficiency improvements so that others can build upon the growing level of experience in this area.

B. Description of Labs21 XL Project

EPA's OARM and OEPI are planning to offer laboratories regulatory or policy flexibility through a customized XL review process as a means to enable laboratories to maximize environmental performance under Labs21. Under Project XL as operated by OEPI, EPA offers flexibility in its regulations, policies, procedures, processes and guidance, as well as other benefits to encourage companies, communities and other project sponsors to develop and test "cleaner, cheaper and smarter" alternatives to the current system. Flexibility incentives are already available to laboratories who undertake XL projects through the existing XL program; however, through the Labs21 XL project that is the subject of this FPA, EPA anticipates offering a streamlined XL application and selection process for Labs21 participants.

EPA envisions developing the Labs21 XL project in two stages. The first stage is the completion and signing of this FPA. In signing this FPA, OARM and OEPI commit to working internally within the EPA and with laboratories to determine how to harmonize Labs21 and XL application and review processes with the goal of making it possible for EPA to utilize information compiled on facilities under Labs21 as the core data for the XL review. This FPA does not discuss any specific cases of testing methods of achieving superior environmental performance at laboratories; it serves instead as an umbrella agreement outlining the intentions and commitments of the two EPA offices that are working to harmonize their processes. In addition, the FPA lays out the general XL-related provisions and commitments of future Labs21 partners in anticipation of having laboratories sign on to the FPA later via addenda that describe case-specific Labs21/XL agreements.

The second stage of the Labs21 XL project will be to develop and issue case-specific agreements for testing innovative ways to maximize environmental performance at laboratories. Because the agreements may be with either single or multiple Labs21 partners, the FPA addenda may be either facility-, group-, or media-specific in nature. These agreements will be documented in subsequent addenda to this FPA, and will be negotiated and signed separately. EPA will negotiate these case-specific agreements through the existing XL process, and the agreements will consequently need to meet XL project review criteria, including criteria on environmental performance and stakeholder involvement. Similarly, any Labs21 partners acting as parties to these agreements must fulfill the responsibilities of XL sponsors. The XL review criteria and sponsor responsibilities are described in a series of XL documents (including 60 FR 27282, May 23, 1995, and 62 FR 19872, April 23, 1997) available through the EPA website at www.epa.gov/projectxl. These documents make clear that, prior to any regulatory flexibility being granted, a project sponsor will be subject to an EPA and Department of Justice screen for

compliance issues.

C. Contents of FPA Addenda

As discussed above, case-specific agreements under the Labs21 XL project will be described and executed through specific addenda to this umbrella FPA. At this time, EPA signatories envision that each addendum will highlight:

- *Parties to the agreement*, including a discussion of whether one or multiple facilities are covered under the case-specific agreement
- *The flexibility negotiated through Labs21*, including specific details on the regulations, policies or programs under which the flexibility is to be granted
- *Agreement commitments*, including specific actions such as capital improvements or operational changes that the Labs21 partner(s) agree to undertake as part of demonstrating pursuit of improved environmental performance
- *The superior environmental performance* that the Labs21 partner(s) is anticipated to attain, including a comparison with the likely future environmental performance under Labs21 without the benefit of flexibilities extended under XL
- *Stakeholder involvement* as led by the Labs21 partner in accordance with XL practices
- *The implementation mechanism* that makes the project possible, including any enforceable legal mechanisms such as a site-specific rule or variance
- *The timeline* for completing the project
- *The evaluation process* for determining the effectiveness of the flexibility in promoting superior environmental performance, including milestones and timeframes for completing the evaluation

III. How the Project Will Meet the XL Criteria

A. Anticipated Superior Environmental Performance

EPA's expectation is that laboratories that sign on to Labs21 will achieve measurable superior environmental performance beyond what is achieved by labs under current federal and state regulatory systems. By participating in Project XL, the Labs21 partners will experience both improved accountability and increased flexibility while achieving superior environmental performance for laboratory operations through Labs21.

By applying the Labs21 approach at its own facilities, EPA has realized the environmental benefits described below. Labs21 Partners may achieve similar results by adopting the Labs21 approach to laboratory operation and design:

- EPA is conducting a major energy efficiency upgrade at its National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor, Michigan. Prior to these efforts, the lab required 2.5 megawatts of electricity, consumed energy at a rate exceeding 700,000 Btus per gross-square-foot, and consumed 31 million gallons of water annually at a cost to taxpayers of more than $1 million per year. The planned

energy upgrade will establish NVFEL as an energy and environmental showcase facility by reducing source emissions, energy consumption, energy costs, and incorporating renewable technologies. The modifications being implemented are guaranteed to reduce annual electrical demand by 68 percent; reduce energy use per gross-square-foot by 66 percent; and reduce annual water consumption by 80 percent.

- EPA's laboratory in Ada, Oklahoma, will soon undergo a comprehensive energy-efficiency upgrade of its HVAC system. The upgrade will include installation of a ground-source heat pump (GHP) system, complete variable air volume system for air supply and fume hood air exhaust, and an integrated direct digital control (DDC) system for HVAC, energy, air, fire, and security management. EPA expects the HVAC and other upgrades at Ada to reduce energy consumption in excess of 60 percent, a reduction of 1.7 million kilowatt hours per year. The installation of the GHP will eliminate the use of natural gas and significantly lower energy consumption in the Ada laboratory, thereby reducing carbon dioxide production by 68.6 million pounds, sulfur oxides by 11 million pounds, nitrogen oxides by 17.3 million pounds, and carbon monoxide by 84 million pounds over the useful life of the system.

- EPA is currently buying 100 percent "green power" at its Richmond, California; Golden, Colorado; and Manchester, Washington, laboratories. The Agency also plans to implement green power purchasing at its Chelmsford, Massachusetts laboratory. In addition, EPA is supporting a biomass combined heat and power system at the U.S. Department of Agriculture (USDA) field station in Athens, Georgia. This project could reduce EPA's Athens-ORD facility's reliance on traditional electric energy sources by 100 percent, eliminating power generated, non-renewable, atmospheric emissions as well. The Agency is planning other green power purchases as deregulation occurs across the country.

- EPA also is installing a 1 Megawatt solid oxide fuel cell at its Fort Meade, Maryland, Environmental Science Center. The fuel cell is expected to achieve an electrical efficiency of 58 percent and annual reductions of 4,100 tons of carbon dioxide, 100,000 pounds of sulfur dioxide, and 41,000 pounds of nitrogen oxide per Megawatt of generated electricity. Other efforts to obtain power from renewable sources include a 100 kilowatt (kW) photovoltaic system at the Research Triangle Park laboratory and a 500 kW wind power electric generator at the Narragansett, Rhode Island, laboratory.

Specific environmental commitments of individual facilities or groups will be described in addenda to this FPA that document case-specific agreements with Labs21 partner(s).

B. Cost Savings, Paperwork Reduction and Operational Flexibility

EPA has demonstrated the opportunities for cost savings through improvements in

laboratory operations and design. By participating in Labs21 and adopting the Labs21 approach, partners will have the opportunity to achieve similar results. The following examples illustrate EPA's success in reducing costs for energy and water consumption:

- Through the major energy efficiency upgrade, EPA expects to reduce its annual utility bill by 74 percent at its Ann Arbor laboratory. This will save the Agency more than $800,000 annually and provide a simple payback on the contractor's capital expenditure for energy improvements in less than 10 years.

- By installing a GHP and other improvements at its Ada, Oklahoma, laboratory, EPA estimates the energy costs for operating the laboratory will be less than $1 per square foot compared with the $2.72 per square foot spent in fiscal year 1999. By eliminating the need for a cooling tower, the geothermal system will also reduce the lab's water consumption by more than 80 percent. This reduction in water usage will save more than 938,000 gallons of cooling tower water over the estimated life of the system.

- EPA is tracking its carbon, sulphur and nitrogen atmospheric emissions reductions resulting from its use of advanced energy efficient systems and renewable energy. In doing so, EPA anticipates the creation of or participation in an emissions trading market which will provide added value and an increased return on investment for these projects.

C. Stakeholder Involvement and Support

EPA has identified an initial set of stakeholders who will actively contribute to the continued development of the Labs21 XL Project. These stakeholders to date have assisted EPA in identifying possible general areas for regulatory flexibility for laboratories and in structuring EPA's partner recruitment efforts. With the help of these stakeholders, EPA issued in June 2000 a Federal Register notice asking laboratories to identify specific opportunities where policy or regulatory flexibility might enhance laboratories' environmental performance (65 FR 35929; June 6, 2000). As the Labs21 initiative moves forward and EPA negotiates case-specific agreements through XL, the existing Project XL process for stakeholder involvement will ensure that the laboratory community and any relevant stakeholders are kept informed and that their input is solicited in regard to any flexibility.

B. Innovative Approach and Multi-Media Pollution Prevention

OARM is considering instituting a program to train, certify and coordinate a network of university and non-profit organizations identified as Regional Centers of Excellence (RCE). As currently envisioned, the Centers will promote the Labs21 Initiative and work with OARM and OEPI to craft case-specific agreements to enable environmental performance of Labs21 participants, as appropriate. As the Labs21 Initiative expands beyond its initial focus on energy efficiency and water conservation to address other pollution prevention and environmental parameters, each RCE, in turn, will support the expanded nature of the initiative.

C. Transferability

Although this FPA does not contain any direct transferability benefits, later case-specific agreements may have transferability benefits that could accrue in the future.

D. Feasibility of the Project

EPA is proceeding with development of the Labs21 initiative, and there are no known obstacles to the signing of this FPA. Later case-specific agreements with laboratories will be negotiated through the XL process, and any flexibilities will be coordinated through the appropriate EPA offices to ensure feasibility.

E. Monitoring, Reporting, Accountability, and Evaluation

An important part of the Labs21 initiative will be to establish methods of ensuring that Labs21 partners strive for the environmental goals they signed on to under Labs21. This demonstration of a good faith effort to achieve the Labs21 goals will be utilized by the XL program to ascertain that the parties to any case-specific agreements continue to meet their XL-related commitments.

H. Avoidance of Shifting the Risk Burden to Other Areas or Media

This project is consistent with Executive Order 12898 on Environmental Justice. No group of citizens or neighborhood will be subject to disproportionate environmental impacts. Citizens in communities surrounding Labs21 partners are expected to benefit from the implementation of projects undertaken as part of meeting the Labs21 commitments. Any possibility of risk shifts due to flexibility granted through XL will be scrutinized and minimized or eliminated as part of the XL review process.

IV. Description of the Requested Flexibility and the Project's Implementation Mechanisms

As discussed above in the section entitled Contents of FPA Addenda, each addendum documenting a case-specific agreement will identify the party (parties) to the specific flexibility, the flexibility to be granted, the superior environmental performance, the legal mechanism, etc. Section IV.A. below lists some possible types of regulatory or policy flexibility of interest to laboratories.

A. Requested Flexibility

This Agreement will function as an "umbrella FPA," and does not describe any specific federal regulatory flexibility. Facility-, group- or media-specific addenda that describe case-specific agreements with any associated regulatory or policy flexibilities will be negotiated and signed separately, and will be attached to this umbrella FPA.

Laboratories are highly diverse facilities that conduct a wide range of research activities.

Some of these activities are subject to government regulation, including regulation by EPA. The following is a partial list of EPA regulations that apply to laboratories:

. RCRA

- **S** Storage and disposal of hazardous wastes
- **S** Regulation of underground storage tanks

. EPCRA

- **S** Emergency planning
- **S** Chemical reporting
- **S** Annual inventory reporting
- **S** Annual release reporting

. CAAA

- **S** NAAQS for facilities located in nonattainment areas
- **S** New source review permits for new facilities or modifications existing facilities (nonattainment areas)
- **S** PSD permits for new facilities or modifications to existing facilities (attainment areas)
- **S** MACT standards for major air toxics sources
- **S** Title V operating permits
- **S** Risk management planning
- **S** Use of ozone-depleting substances

. CWA

- **S** Pretreatment for discharge of process waters
- **S** Control of stormwater discharges
- **S** Oil spill control and countermeasure plans

. TSCA

- **S** Premanufacture notification for new chemicals
- **S** PCBs in electrical equipment
- **S** Asbestos insulation and building products
- **S** Lead in drinking water systems
- **S** Metalworking fluids
- **S** Storage and disposal of hazardous wastes
- **S** Regulation of underground storage tanks

At this point in the development of the Labs21 initiative, EPA has not analyzed any requests for regulatory flexibility under regulations affecting laboratories. The inclusion of this list with this FPA does not imply that EPA has evaluated any specific flexibility as part of this umbrella FPA, nor is it intended to constitute a formal start to granting or committing to grant specific waivers.

B. Legally-Binding Implementation Mechanisms

The legal mechanism for each type of flexibility to be granted will be discussed in the associated addendum. Possible legal mechanisms include site-specific rule-makings, permit modifications, or variances**.**

V. Discussion of Intentions and Commitments for Implementing the Project

A. EPA/OARM's Intentions and Commitments

As discussed more fully in this FPA, EPA's Office of Administration and Resources Management will:

- Cooperate with the Office of Environmental Policy Innovation to ensure that information requested under Labs21, including enforcement and environmental information, is sufficient to support the analytic needs of the XL review
- Outline environmental commitments for Labs21 partners
- Forward requests from Labs21 partners for flexibility to OEPI, including proposed commitments for achieving superior environmental performance
- Review Labs21 partners' progress in achieving environmental commitments under Labs21
- Notify OEPI if a lab fails to achieve the stated goals
- Participate in discussions with OEPI regarding any possible need to revoke flexibilities granted to Labs21 partners
- Adhere to additional commitments as outlined in any subsequent addenda
- Coordinate implementation of a nation-wide support system to build regional capacity for Labs21 and a referral process to coordinate the Project XL implementation.

B. EPA/OEPI's Intentions and Commitments

As discussed more fully elsewhere in this FPA, EPA's Office of Environmental Policy Innovation will:

- Cooperate with the Office of Administration and Resources Management to ensure that information requested under Labs21, including enforcement and environmental information, is sufficient to support the analytic needs of the XL review
- Review requests from Labs21 partners for flexibility and complete any rulemakings necessary to grant the flexibility
- Uphold the XL process, including commitments under XL to involve stakeholders and to ensure that sponsors have satisfactory compliance records
- Undertake actions to revoke any previously granted flexibility, if such an action should be necessary as a result of a joint determination by OARM and OEPI.
- Adhere to additional commitments as outlined in any subsequent addenda.

C. Labs21 Partners' Intentions and Commitments

As discussed more fully elsewhere in this FPA, any Labs21 partners signing on to subsequent addenda to the FPA will:

- Submit information necessary to complete the Labs21/XL review
- Strive to achieve the environmental goals outlined in any case-specific agreements
- Undertake specific actions such as capital improvements or operational changes that were agreed to as part of demonstrating pursuit of improved environmental performance
- Report on progress towards enforceable commitments and compliance with any enforceable requirements
- Notify OEPI if the laboratory is likely to fail or is actively failing to achieve the stated goals
- Adhere to additional commitments as outlined in the addendum.

D. Project Duration and Milestones

The EPA Signatories intend that the joint Labs21/XL reviews will be available to Labs21 Partners as long as the Labs21 initiative and XL are both in operation. At the conclusion of the first five (5) years, OARM and OEPI will conduct a joint assessment regarding the need to continue the combined reviews, and will either extend or terminate the Labs21/XL collaboration, as appropriate. In addition, each subsequent addendum will have its own timeline and associated milestones.

E. Unavoidable Delay During Project Implementation

"Unavoidable delay" (for purposes of this Agreement) means any event beyond the control of any Project Signatory that causes delays or prevents the implementation of the Project described in this Agreement, despite the Project Signatories' best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example, a fire, severe weather, acts of war, vandalism, or legislative or judicial action barring implementation. If a Labs21 partner needs additional time to fully implement the project, it will request a formal extension of this Agreement from the other Project Signatories.

When any event occurs that may delay or prevent the implementation of this Project, whether or not it is avoidable, the Project Signatory to this Agreement who knows about it will immediately provide notice to the remaining Project Signatories. Within ten (10) days after that initial notice, the Project Signatory should confirm the event in writing. The confirming notice should include: 1) the reason for the delay; 2) the anticipated duration; 3) all actions taken to prevent or minimize the delay; and 4) why the delay was considered unavoidable, accompanied by appropriate documentation.

If the Project Signatories agree that the delay is unavoidable, relevant parts of the Project schedule (see Section V.D.) should be extended to cover the time period lost due to the delay. If they agree, they should also document their agreement in a written amendment to this Agreement. If the Project Signatories fail to agree, they should follow the provisions for Dispute Resolution

outlined below.

This Section applies only to the provisions of this Agreement. Enforceable, regulatory mechanisms, such as permit provisions or rules, will be subject to modification or enforcement as provided in applicable law.

VI. Legal Basis for the Project

A. Authority to Enter Into the Agreement

By signing this Agreement and any later addenda, OARM, OEPI, and any subsequent signatories acknowledge and agree that they have the respective authorities, discretion, and resources to enter into this Agreement and to implement all applicable provisions of this Project, as described in this document and any accompanying addenda.

B. Legal Effect of the Agreement

This Final Project Agreement states the intentions of the Project Signatories with respect to the Labs21 XL Project. The Signatories have stated their intentions seriously and in good faith, and expect to carry out their stated intentions. Project signatories who sign on to any addendum agree to adhere to the provisions outlined in the umbrella FPA and the addendum itself.

This Agreement in itself does not create or modify legal rights or obligations and is not a contract or a regulatory action, such as a permit or a rule, and is not legally binding or enforceable against any of the Project Signatories. Rather, it expresses the plans and intentions of the Project Signatories without making those plans and intentions binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters. Thus, for example, the Agreement establishes procedures that the Project Signatories intend to follow with respect to dispute resolution and termination (see Sections VIII and IX). However, while the Project Signatories fully intend to adhere to these procedures, they are not legally obligated to do so.

Because this Agreement itself does not create or modify any binding legal requirements, all applicable regulatory requirements will continue to apply to laboratories until EPA issues the appropriate implementation mechanism, if any. Any rules, permit modifications or legal mechanisms that enable implementation of this project will be effective and enforceable as provided under applicable law.

This Agreement is not a "final agency action" by EPA, because it does not create or modify legal rights or obligations and is not legally enforceable. This Agreement itself is not subject to judicial review or enforcement. Nothing any Project Signatory does or does not do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as a basis for any claim for damages, compensation or other relief against any Project Signatory.

C. Other Laws or Regulations That May Apply

Except as may be provided in any legal implementing mechanism for this project, the Project Signatories do not intend that this project will modify any other existing or future laws or regulations that may apply to the Labs21 partners.

D. Retention of Rights to Other Legal Remedies

Except as expressly provided in any legal implementing mechanisms, nothing in the Agreement affects or limits the legal rights of Project Signatories. These rights may include legal, equitable, civil, criminal or administrative claims or other relief regarding the enforcement of present or future applicable federal and state codes, rules, regulations or permits with respect to the facility.

Although Labs21 partners do not intend to challenge agency actions implementing the Project (including any rule amendments or adoptions, permit actions, or other action) that are consistent with this Agreement, participating laboratories reserve any right they may have to appeal or otherwise challenge any EPA actions implementing the Project. With regard to any legal implementing mechanisms, nothing in this Agreement is intended to limit laboratories' right to administrative or judicial appeal or review of those legal mechanisms, in accordance with the applicable procedures for such review.

VII. Amendments or Modifications to the Agreement

This Project is an experiment designed to test new approaches to environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this Project. Therefore, it may be appropriate to amend this Agreement or its addenda at some point during its duration.

This Final Project Agreement or its addenda may be amended by mutual agreement of Project Signatories at any time during the duration of the project. The parties recognize that amendments to this Agreement may also necessitate modification of legal implementation mechanisms or may require development of new implementation mechanisms. If the Agreement is amended, EPA and Labs21 partners expect to work together with other regulatory bodies and stakeholders to identify and pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If the Project Signatories agree to make a substantial amendment to this Agreement, EPA will make available to the general public notice of the amendment and an opportunity to participate in the process, as appropriate.

In determining whether to amend the Agreement, the Project Signatories will evaluate whether the proposed amendment meets Project XL acceptance criteria and any other relevant considerations agreed on by the Project Signatories. All Project Signatories to the Agreement will meet within ninety (90) days following submission of any amendment proposal (or within a shorter or longer period if all Project Signatories agree) to discuss evaluation of the proposed amendment. If all Project Signatories support the proposed amendment, the EPA Signatories will (after appropriate stakeholder involvement) amend the Agreement.

VIII. Transfer of Project Benefits and Responsibilities to a New Owner

The Project Signatories expect that the implementing mechanisms will allow for a transfer of a sponsor's benefits and responsibilities under the agreement to any future owner or operator upon request of the sponsor and the new owner or operator, provided that the following conditions are met:

1. The sponsor will provide written notice of any such proposed transfer to the EPA and any relevant authorities at least ninety (90) days before the effective date of the transfer. The notice is expected to include identification of the proposed new owner or operator, a description of its financial and technical capability to assume the obligations associated with the agreement, and a statement of the new owner or operator's intention to take over the responsibilities in the agreement of the existing owner or operator.

2. Within forty-five (45) days of receipt of the written notice, the Project Signatories expect that EPA and any relevant authorities, in consultation with stakeholders will determine whether: 1) the new owner or operator has demonstrated adequate capability to meet EPA's requirements for carrying out the XL agreement; 2) is willing to take over the responsibilities in the XL agreement of the existing owner or operator; and 3) is otherwise an appropriate sponsor. Other relevant factors, including the new owner or operator's record of compliance with Federal, State and local environmental requirements, may be considered as well.

It will be necessary to modify the Agreement to reflect the new owner and it may also be necessary for EPA and any relevant authorities to amend appropriate rules, permits, or other implementing mechanisms (subject to applicable public notice and comment) to transfer the legal rights and obligations of the sponsor under this agreement to the proposed new owner or operator."

IX Process for Resolving Disputes

Any dispute that arises with respect to this Agreement will be subject to informal negotiations between the Project Signatories. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute is first documented, unless that period is extended by a written agreement of the parties to the dispute. The dispute will be considered documented when one Project Signatory sends a written Notice of Dispute to the other Project Signatories.

If the Project Signatories cannot resolve a dispute through informal negotiations, the parties may invoke non-binding mediation by describing the dispute with a proposal for resolution in a letter to the appropriate Regional Administrator. The Regional Administrator will serve as the non-binding mediator and may request an informal mediation meeting to attempt to resolve the dispute. He or she will then issue a written opinion that will be non-binding and does not constitute a final EPA action. If this effort is not successful, the Project Signatories still have the option to terminate or withdraw from the Agreement, as set forth in Section IX. below.

X. Withdrawal From or Termination of the Agreement

A. Expectations

Although this Agreement is not legally binding and any Project Signatory may withdraw from the Agreement at any time, it is the desire of the Project Signatories that it should remain in effect through the expected duration of five years, and be implemented as fully as possible unless one of the conditions below occurs:

1. Failure by any Project Signatory to (a) comply with the provisions of an enforceable implementing mechanism for this Project, or (b) act in accordance with the provisions of this Agreement. Any assessment of failure will take its nature and duration into account.

2. Failure of any Project Signatory to disclose material facts during development of the Agreement, including any Addenda.

3. Failure of the project to provide superior environmental performance consistent with the provisions of this Agreement.

4. Enactment or promulgation of any environmental, health or safety law or regulation after execution of the Agreement, that renders the project legally, technically or economically impracticable.

In addition, Project Signatories do not intend to withdraw from the Agreement or its addenda if the Labs21 partner does not act in accordance with this Agreement or its implementation mechanisms, unless the actions constitute a substantial failure to act consistently with intentions expressed in this Agreement and its implementation mechanisms.

A Labs21 partner will be given notice and a reasonable opportunity to remedy any "substantial failure" before EPA's withdrawal. If there is a disagreement between the Project Signatories over whether a "substantial failure" exists, the parties will use the dispute resolution mechanism identified elsewhere in this Agreement. Regulatory authorities retain their discretion to use existing enforcement authorities, including withdrawal or termination of this Project, as appropriate. Labs21 partners retain any existing rights or abilities to defend themselves against any enforcement actions, in accordance with applicable procedures.

B. Procedures

The Project Signatories agree that the following procedures will be used to withdraw from or terminate the Project before the expiration of the Project term. They also agree that any implementing mechanisms will provide for withdrawal or termination consistent with these procedures:

1. Any Project Signatory that wants to terminate or withdraw from the Project is expected to provide written notice to the other Project Signatories at least sixty (60)

days before the withdrawal or termination.

2. If requested by any Project Signatory during the sixty (60) day period noted above, the dispute resolution proceedings described in this Agreement may be initiated to resolve any dispute relating to the intended withdrawal or termination. If, following any dispute resolution or informal discussion, a Project Signatory still desires to withdraw or terminate, that Project Signatory will provide written notice of final withdrawal or termination to the other Project Signatories.

   If any agency withdraws or terminates its participation in the Agreement, the remaining agencies will consult with the Labs21 partner(s) to determine whether the Agreement should be continued in a modified form, consistent with applicable federal or State law, or whether it should be terminated.

3. The procedures described in this Section apply only to the decision to withdraw or terminate participation in this Agreement. Procedures to be used in modifying or rescinding any legal implementing mechanisms will be governed by the terms of those legal mechanisms and applicable law.

XI. Compliance After the Project is Over

The Project Signatories intend that there be an orderly return to compliance upon completion, withdrawal from, or termination of the Project, as follows:

A. Orderly Return to Compliance with Otherwise Applicable Regulations, if the Project Term is Completed

If, after an evaluation, the Labs21 XL Project as a whole or any of the case-specific agreements are terminated because the term has ended, sponsor(s) will return to compliance with all applicable requirements by the end of the agreed-upon term, unless the agreement is amended or modified in accordance with Section VII of this Agreement. The sponsor is expected to anticipate and plan for all activities to return to compliance sufficiently in advance of the end of the agreed-upon term. The sponsor may request a meeting with EPA and other relevant authorities to discuss the timing and nature of any actions that the sponsor will be required to take. The Project Signatories should meet within thirty days of receipt of sponsor's written request for such a discussion. At and following such a meeting, the Project Signatories should discuss in reasonable, good faith, which of the requirements deferred under this agreement will apply after termination of the agreement.

B. Orderly Return to Compliance with Otherwise Applicable Regulations in the Event of Early Withdrawal or Termination

In the event of a withdrawal or termination not based on the end of the term of the agreement and where the sponsor has made efforts in good faith, the Project Signatories will determine an interim compliance period to provide sufficient time for sponsor to return to compliance with any regulations deferred under the agreement. The interim compliance period

will extend from the date on which EPA and other relevant authorities provide written notice of final withdrawal or termination of the agreement, in accordance with Section X of this FPA. By the end of the interim compliance period, sponsor will comply with the applicable deferred standards set forth in applicable regulations. During the interim compliance period, EPA and any relevant local authorities may issue an order, permit, or other legally enforceable mechanism establishing a schedule for the sponsor to return to compliance with otherwise applicable regulations as soon as practicable. This schedule cannot extend beyond number of months from the date of withdrawal or termination, as determined in any applicable case-specific agreements. The sponsor intends to be in compliance with all applicable Federal, State, and local requirements as soon as is practicable, as will be set forth in the new schedule.

XII. Signatories and Effective Date

United States Environmental Protection Agency

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Rick Farrell, Assistant Administrator
Office of Policy and Environmental Innovation

_____

Date

United States Environmental Protection Agency

_____

Romulo L. Diaz, Jr.
Assistant Administrator
Office of Administration and Resources Management

_____

Date